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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,007

03/26/2004

Fatih M. Ozluturk

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EXAMINER

MOUTAOUAKIL, MOUNIR

ART UNIT

PAPER NUMBER

2616

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DELIVERY MODE

07/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/810,007	Applicant(s) OZLUTURK, FATIH M.	
	Examiner Mounir Moutaouakil	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 10, 12, 13, 16, and 19 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 8, 9, 11, 14, 15, 17, 18 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1. It is not clear what it meant by "processing a first communication for transmission". I.e. communication includes transmission.

Claim 2 is rejected because it depends on the rejected claim.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 1 and 2 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,798,759. Although the conflicting claims are not identical, they are not patentably distinct from each other because they teach a method for supporting a plurality of communication rates with a base station that uses a plurality of communication channels.

Claims 1 and 2 include all the limitation of claim 16 of patent No.6, 798,759 except for the deletion of the limitation "first data rate is 16 Kb/s and the second data rate is 64 Kb/s". The deleted limitation was omitted to broaden the scope of the claim. Therefore, deletion of the additional limitations in the instant claim would have been obvious to one of ordinary skill in the art.

See *In re Karlson*, 136 USPQ 184 (CCPA). Also note *Ex parte Rainu*, 168 USPQ 375 (Bd.App.1969); omission of a reference element whose function is not needed would be obvious to one skilled in the art.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 3 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by I (US 5,671,218).

Regarding claims 3 and 12, I disclose a method for supporting a plurality of communication rates in a wireless communication system comprising a base station and a subscriber unit (see figure.1). The method comprises establishing an initial communication link between the base station and the subscriber unit (see column 3, line 64- column 4, line 4. Where the subscriber units transmits access requests to establish communication with the base station), transmitting a request for communication by the subscriber unit to the base station (see column 3, line 64- column 4, line 4. Where the subscriber units transmits access requests to establish communication with the base station), determining a required communication rate for the requested communication (see column 4, lines 20-30. the base station assigns the data rate for each subscriber unit), allocating a wireless channel sufficient for supporting the requested communication unit (see column 3, line 64- column 4, line 4. where the subscriber units are granted a wireless channel to support the access request).

Regarding claims 4 and 13. I disclose a method wherein the requested communication is requested through plain old telephony service (POTS), integrated services digital network (ISDN) service, variable bit rate (VBR) data service, wideband service, leased line service, or packet data service (see figure 8. element 448, where the subscriber device transmits requests through a packet data service).

Claim Rejections - 35 USC § 103

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7, 10, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over I in view of Gitlin et al (US 5,442,625). Hereinafter referred to as Gitlin.

Regarding claims 7 and 16. I discloses all the limitations of claims 3 and 12.

I does not disclose that the step of allocating a wireless channel comprises selecting sufficient number of codes for code division multiple access (CDMA) system for the subscriber unit. However, Gitlin discloses a code division multiple access system providing variable data rate access to subscriber units (see figure2), the system also provides sufficient codes for the CDMA for the subscriber units. Thus, it should have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the method of selecting sufficient number of codes for CDMA system for the subscriber unit, as taught by Gitlin, into the cannel allocation system of I for the purpose of increasing system performance.

Regarding claims 10 and 19. I discloses all the limitations of claims 3 and 12.

I does not disclose that the system further comprises the step of monitoring change of required communication rate; and adjusting channel allocation based on the change. However, Gitlin discloses a method of monitoring and the change in the communication rate and adjusting channel allocation based on the change (see figure 1-3 and column 1, lines 45-59). Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the method of mentoring the communication rate and adjusting channel allocation based on the change, as taught by Gitlin, into the channel allocation system of I for the purpose of enhancing system performance and reliability.

Allowable Subject Matter

10. Claims 5, 6, 8, 9, 11, 14, 15, 17, 18, and 20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mounir Moutaouakil whose telephone number is 571-270-1416. The examiner can normally be reached on Monday-Thursday (4pm-4: 30pm) eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mounir Moutaouakil
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